In the Supreme Court of the United States

October Term, 1897

William L. Dunsmoor, plaintiff in error,
v.
The United States.

No. 196.

In error to the district court of the United States for the southern district of Iowa.

BRIEF FOR THE UNITED STATES.

Jas. E. Boyd,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

WILLIAM L. LEDBETTER, PLAINTIFF in error,
v.
THE UNITED STATES. } No. 196.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The plaintiff in error was indicted for carrying on the business of a retail liquor dealer without having paid the special tax therefor, as required by law. He was found guilty as charged in the indictment in count 1, and sentenced to imprisonment in jail for thirty days and to pay a fine of $250 and costs. (Rec., pp. 2–6.)

POINTS AND ARGUMENT.

I.

The exception in this case by the plaintiff in error is based first upon alleged defectiveness of the first count of the bill of indictment on which plaintiff in error was convicted. This count is drawn under section 3242 of the Revised Statutes, section 16 of the act of February 8, 1875 (18 Stat., 307), which describes the offense for which the plaintiff in error was indicted, as follows:

> That any person who shall carry on the business of * * * retail liquor dealer * * * without having paid the special tax as required by law * * * shall for every such offense be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than thirty days nor more than two years.

It will be observed that the indictment in this case follows the wording of the statute, except the word "therefor" is added, the indictment being (after the usual recitals) as follows:

> Did then and there wilfully, unlawfully, and feloniously carry on the business of a retail liquor dealer, without having paid the special tax *therefor* as required by law, contrary to the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Subdivison 4, section 3244, of the Revised Statutes, as amended, and section 18 of the act of February 8, 1875, as amended by section 4 of the act of March 1, 1879 (20 Stat., 327), providing for the payment of special taxes, fixes the amount to be paid by retail dealers in liquor at $25 per annum, and also provides that "every person

who sells or offers for sale foreign or domestic distilled spirits, wines, or malt liquors, otherwise than hereinafter provided, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors."

So it was not necessary, in the bill of indictment charging this offense, to allege more than is set forth in the count upon which the plaintiff in error was convicted. It charges the offense with certainty, for that it states that he carried on the business of a retail liquor dealer without having paid the special tax required by law.

As to requirements in indictments, see Wharton's Crim. Pl. and Pr., 166; Clark's Crim. Proc., 150; Bishop, § 519 *et seq.*; Wharton's Crim. Pl. and Pr., 9th ed., § 151; 1 Bishop's New Crim. Proc., § 511.

The further exception is to the refusal of the court, at the request of plaintiff in error, to require the attorney for the United States to furnish bill of particulars.

An application for a bill of particulars is addressed to the discretion of the court, and its decision thereon is not open to revision by a higher tribunal.

1 Bishop's New Crim. Proc., § 643;
Wharton's Crim. Pl. & Pr., § 705;
Com. v. *Giles*, 1 Gray (Mass.), 466, 469;
Com. v. *Wood*, 4 Gray, 11, 13;
Harrington v. *Harrington*, 107 Mass., 329, 334;
Townsend v. *Williams*, 117 N. C., 330, 337;
State v. *Hill*, 13 R. I., 314, 315;
State v. *Nagle*, 14 R. I., 331, 333.

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